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SUBJECT: HUNGARY'S NEW ANTI-CORRUPTION PACKAGE

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Classified By: Erik Schnotala for reasons 1.4 (b,d)

¶1. (C) SUMMARY: On October 26, the Bajnai administration submitted a new anti-corruption package to Parliament that addresses corruption in public procurements. The initiative is the latest in a series of proposals that have been publicly touted with great fanfare only to die quietly in the legislative process. Given the scope of the problem and the lack of political will to enforce existing laws, it is unclear what effects, if any, this legislation would have on public procurement corruption. If approved by Parliament, the measures would go into effect on January 1, ¶2010. The current political environment, however, makes passage of this legislation uncertain. END SUMMARY.

PUBLIC PROCUREMENT CORRUPTION A MAJOR PROBLEM

¶2. (SBU) The problem of corruption in Hungary looms so large that many observers are automatically dismissive of piecemeal reform efforts. Party contribution/campaign financing is seen by many as the root of corruption in Hungary. The latest anti-corruption package does not address this larger issue, instead focusing directly on public procurements.

¶3. (C) By any standards, corruption in public procurements is a serious problem. A recent survey by Hungarian think tank GKI concluded that up to 75 percent of public procurements are tainted by corruption. As a result, the cost of the average public procurement is increased 25 percent. In a country facing a tight budgetary environment, the resulting loss drains millions of dollars in public funds from ministries that are strapped for money. According to Transparency International, contracting authorities and companies use a variety of mechanisms to corrupt the public procurement process. One of the most serious problems is when contracting authorities use loopholes in the Public Procurement Act (PPA) to sign state or local government contracts without a public procurement procedure. Parliamentary committees aid in this by invoking exceptions to public procurements for purely political reasons. In addition to kickbacks and outright bribery, the contracting authorities and bidding companies are often able to use existing anti-corruption legislation to circumvent fair and transparent public procurement processes.

WHAT'S IN THE ANTI-CORRUPTION PACKAGE?

¶4. (U) The latest anti-corruption package, which Prime Minister Bajnai submitted to Parliament on October 26, contains two bills and a draft resolution. The bills,

unlike the draft resolution, would be legally binding if approved by Parliament. The first bill introduces legal protection and financial incentives for "whistleblowers" and outlines the channels they would follow in reporting corruption. (Note: Post has actively promoted the inclusion of whistleblower protection into Hungarian law. End Note.) A new body, the Public Procurement and Public Interest Protection Office (PPPIPO), would coordinate the reporting process. It would also have limited investigative powers and be able to impose fines on organizations for corrupt practices.

15. (U) The second bill outlines the structure of this new body, which would operate within the existing Public Procurement Council, and proposes amendments to the Public Procurement Act (PPA) regarding integrity pacts. (Note: An integrity pact consists of an agreement monitored by an NGO between the government and all bidders for a public contract in which the parties pledge not to engage in corruption. End Note.) The PPA was last amended in April 2009 to authorize the use of integrity pacts in public procurements. Unfortunately the language was so vague that they have not been used in practice. The latest proposal aims to clarify the role that integrity pacts would play in public procurements. In addition to the bills, a draft resolution contains a code of ethics for civil servants. This is the least discussed item in the anti-corruption package since it would not be legally binding.

16. (SBU) The new anti-corruption package closely resembles prior government anti-corruption initiatives. In November 2008, Prime Minister Gyurcsany proposed anti-corruption

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legislation that was modeled on the U.S. False Claims Act and included whistleblower protections. In March 2009 the government drafted legislation nearly identical to the current bill. All previous anti-corruption initiatives have shared a similar fate: each seemed on the verge of approval only to die somewhere before a full Parliamentary debate.

DOES HUNGARY NEED MORE ANTI-CORRUPTION LEGISLATION?

17. (SBU) Hungary already has a plethora of anti-corruption statutes (Note: According to one study, Hungary has more paragraphs of anti-corruption legislation than most of the European Union member states. End Note.) Many observers blame the byzantine maze of legislation and subsequent amendments for the confusion surrounding the public procurement process. Only legal experts, focusing almost exclusively on these issues, can make sense of them. Even among legal experts, the legislation gives way to different interpretations and misunderstandings. The multiple ministries and agencies, with their overlapping responsibilities, add to the complexity of public procurements. The main problem is not an insufficient legal infrastructure but the political will needed to enforce existing laws. A question we hear from many observers is, "If the government is not willing to tackle the main problem of investigation and enforcement, why would additional anti-corruption statutes or additional anti-corruption bodies make a difference?" This crucial question puts many potential supporters in difficult positions. Transparency International, for example, which has made legal protection for whistleblowers and integrity pacts top priorities, questions whether it will support the legislation in its current form.

18. (C) Comment. In recent months, scandals and negative reports have underscored just how serious and deep-rooted the problem of corruption remains in Hungary. Examples include the radio frequency tender undermined by a private deal between political parties (Ref A), as well as

questionable payments being made to executives of state-owned companies like the Hungarian railway company (MAV). Increasingly blatant examples of public corruption fuel public cynicism and risk turning off potential foreign investors. The anti-corruption package contains positive measures, such as providing protection to whistleblowers and promoting the use of integrity pacts. Although the Bajnai administration is likely pushing the legislation in good faith as a reform measure, it does not have the required support from its own party to clean up the public procurement process. As the main beneficiaries of maintaining the status quo, Hungary's largest political parties have yet to demonstrate that they are serious about meaningful reform. Without the political will to pressure the police and prosecutor's office to vigorously enforce existing laws, any additional anti-corruption legislation -- no matter how well intentioned -- will only have marginal effects. End Comment.
LEVINE